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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6967-2024

Date of Decision: March 21, 2024

Krishan Kumar and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Gopal Sharma, Advocate
for the petitioners.

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RAJESH BHARDWAJ, J.(ORAL)

Prayer in the present petition is for setting aside the impugned order dated 30.01.2024, Annexure P-21, passed by respondent No.1 in ROR No.12 of 2023, impugned order dated 31.01.2022, Annexure P-18, passed by respondent No.2, i.e., Commissioner, impugned order, dated 02.07.2019, Annexure P-17, passed by respondent No.3, i.e. Collector, impugned Sanad Taksim, dated 25.09.2013, Annexure P-12 and impugned 'Amended Naksha Be', dated 08.07.2013, Annexure P-9, passed by learned Assistant Collector Ist Grade, Bahadurgarh, since the respondents have committed legal error in not appreciating the facts that before the revenue authorities no opportunity of hearing was granted to the petitioners and no summons/notice issued to them despite the fact that name of petitioner No.2 (wife of petitioner No.1) reflected in the revenue record as owner at the initial stage of the partition, i.e. in the 'Naksha A' and also in 'Amended Naksha Be', therefore, the impugned orders are apparently in violation of the mandatory provisions, i.e.

Haryana)(for short, 'the Act').

It has been submitted by learned counsel for the petitioners that petitioners are the owners in possession of the joint land holding measuring 95 kanal 4 marla. Petitioner No.2 is in possession of Khasra No.105/12 (7-0), 19(7-8). He submits that the petitioners became the joint owners of the land vide registered sale deed, dated 20.12.2004. He submits that the petitioners also purchased more share vide registered sale deeds in the year 2010 executed by Ramniwas son of Bhane Ram in favour of the petitioners. He submits that respondent No.4-Mange Ram filed an application for partition of the aforementioned land on 19.11.2004. He submits that initially the petitioners were not impleaded as party however in the amended memo, the petitioners were later on shown as respondents No.15 and 16 in the impugned Sanad Taksim. It is submitted that 'Naksha A' was filed before the learned Assistant Collector where name of respondent No.2 (wife of petitioner No.1) was subsequently mentioned at Sr.No.17. He submits that despite the name of petitioner No.2 was specifically mentioned in 'Naksha A' as co-owner, learned Assistant Collector had committed grave error in not issuing direction to respondent No.4 to array petitioner No.2 as a party. He submits that without appreciating the same, the Assistant Collector approved 'Naksha A' on 12.01.2007. He submits that as some of the co-sharers were proceeded ex parte, they filed an appeal before the Collector for setting aside the ex parte order. Learned Collector set aside the ex parte order vide order dated 17.03.2008 by directing the Assistant Collector to get prepared 'Naksha A' afresh from the field staff. He submits that it was incumbent upon learned Assistant Collector to prepare 'Naksha A' afresh

after decision of the learned Collector. He submits that the Assistant Collector committed a grave error in allowing the mode of partition in absence of petitioner No.2 vide its order dated 13.01.2009. He submits that amended mode of partition was prepared on 15.10.2008 without showing petitioner No.2 as the co-owner and thereafter amended 'Naksha Be' was filed before the learned Assistant Collector on 04.07.2013. He submits that though names of petitioners were reflected in the revenue record, where they were shown as co-owners of the joint land holding but learned Assistant Collector ignored the co-ownership of the petitioners without arraying them as party. It is submitted that the Assistant Collector committed a grave error in approving 'Naksha Be' on 08.07.2013 without taking any step to implead the petitioners as party. It is submitted that Sanad Taksim had been issued illegally on 25.09.2013 without appreciating the evidence on record that partition proceedings were carried out in violation of the settled principles of law. He submits that the petitioners came to know about the partition proceedings when respondent No.4 tried to interfere in their possession. Initially petitioners filed the civil suit for permanent injunction, however, the same was withdrawn and the petitioners filed the appeal before the learned Collector. He submits that the learned Collector without appreciating the evidence on record and the law settled, dismissed the same vide its order dated 02.07.2019. Being aggrieved, the petitioner filed revision petition before the learned Commissioner, however, learned Commissioner illegally dismissed the same vide impugned order dated 31.01.2022. Still aggrieved, the petitioners assailed the same by way of filing the revision petition under Section 16 of the Act before the learned Financial Commissioner, who had

also fallen in error in not appreciating the evidence on record and the law settled and thus illegally dismissed vide impugned order dated 30.01.2024. It has been submitted by learned counsel for the petitioners that on appreciation of the revenue records, i.e. Mutation No.6876, dated 02.03.2005, Mutation No.7448, dated 12.03.2010 and Mutation No.7449, dated 12.03.2010, ownership of petitioners have been specifically reflected and despite approval of the mutation in the name of the petitioners, Halqa Patwari and Girdawar committed the grave error in preparing 'Naksha A' and 'Naksha Be'. He has submitted that the impugned partition proceedings had not been rightly carried out as rights of the petitioners had been clearly prejudiced by the fraud committed with them at the instance of respondent No.4 and the revenue officials who had not brought on record the factum of construction raised by the petitioners on the land comprised in Khasra No.105 Killa No.12 and Killa No.19. He submits that land comprised in these killa numbers is *Gair Mumkin* in nature and the same could not have been part of partition proceedings as per the settled principles of partition. He has submitted that partition proceedings have been carried out in violation of the statutory provisions of Sections 111 and 113 of the Act, as it was incumbent upon the Assistant Collector to issue notice to the petitioners but the same was not done. It is submitted that the impugned orders being in blatant violation of the settled principles of law deserve to be set aside.

Heard.

On hearing the counsel for the petitioners and perusing the record, it is apparent that partition proceedings were initiated by respondent No.4-Mange Ram on 19.11.2004 in respect of land measuring 95 kanal 4

marla. The petitioners had purchased the land on 20.12.2004 from the co-sharers Rajwanti wife of Mangal Singh, Naresh, Rajkumar and Kabir, sons of Mangal Singh after about a month of initiation of partition proceedings. All these vendees were duly served with the notice of the partition application. On purchasing their share, the petitioners had stepped into the shoes of their vendors. There is no denial to the fact that vendors of the petitioners were impleaded and were served by the revenue authorities. Amended title was filed on 25.05.2006 and the petitioners were arrayed as respondents. Sanad Taksim was prepared on 25.09.2013. Petitioners did not challenge the partition proceedings, rather they filed a civil suit for permanent injunction against respondent No.4-Mange Ram for seeking permanent injunction directing him not to interfere in their peaceful possession in the suit land comprised in rectangle/Killa Nos.105//12 and 105//19. Later on this civil suit was withdrawn on 09.01.2017 and thereafter on 21.04.2017, the petitioner filed an appeal before the Collector, Jhajjar. However, the same was dismissed by the Collector on 02.07.2019. The revision petition filed against the same was also dismissed by learned Commissioner, Rohtak Division, Rohtak, vide order dated 31.01.2022. It is apparent from the record that petitioner, at no stage, filed any objection regarding the partition proceedings, however, after issuance of Sanad Taksim, the revision petition was filed before the learned Financial Commissioner. It is evident from the record that petitioners purchased some share of the co-sharers after about a month from the commencement of partition proceedings. As submitted before this Court the petitioners installed a factory and had obtained electricity connection as well. Thus, it

is evident that the petitioners purchased the land at the time when it was a joint land. The nature of the whole land was a joint property which was not partitioned. It is also apparent from the record that there was no construction whatsoever at the time of initiation of partition proceedings or at the time of purchase of this property by the petitioners. Construction, as contended by the petitioners, was raised after initiation of partition proceedings. Thus, the argument raised by counsel for the petitioners that land in question was *gair mumkin* land has no force. It is evident from the record that the petitioners had purchased the land from the joint property consciously. Their vendors/co-sharers were duly made parties to the partition proceedings and were served. After issuance of Sanad Taksim on 25.09.2013, the petitioners filed revision petition after about four years, i.e. in the year 2017. Before this they had filed a civil suit which was withdrawn by them. As per settled law of the partition proceedings, no piece of specific land can be purchased from the land which is not partitioned. Thus, the petitioners could purchase only the share of co-sharers in the land and not any specific khasra from this joint land. As observed by learned Financial Commissioner, the petitioners claimed the possession of Rectangle/Killa Nos.105//12 and 105//19. However, as observed, they had been allotted full land in Rectangle/Killa No.105//12 and almost half in Rectangle/killla No.105//19. Thus, the revenue authorities have carried out the partition proceedings in accordance with law. There is no denial to the fact that some disturbances in the partition proceedings are unavoidable. It is apparent from the record that the petitioners had purchased the land after initiation of the partition proceedings when it was a joint land. However, though their

vendors were impleaded as a parties and were duly served but it appears that the petitioners intentionally kept silent and agitated their claim so belatedly as to nullify the partition proceedings to suit their interest. Revenue authorities have taken a concurrent view against the petitioners. A Co-ordinate Bench of this Court in Satinder Pal Singh Vs. State of Punjab and others, 2009 SCC OnLine P&H 11188 has held that the findings of the authorities below cannot be interfered unless perverse. It is settled law that this Court while exercising the jurisdiction under Article 226 cannot sit as a Court of appeal over the findings recorded by the authorities below. The Court has to see the prejudice caused, if any, to the parties. On appreciation of the facts and circumstances of this case, accepting the version of the petitioners would result in prolonging the partition proceedings and that would rather cause more prejudice to the respondents and not to the petitioners. Thus, this Court finds no infirmity in the impugned orders and hence, this petition, being devoid of any merits is, hereby, dismissed.

March 21, 2024

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- 1. Whether speaking/reasoned ?
- 2. Whether reportable ?

(RAJESH BHARDWAJ)
JUDGE

Yes/No
Yes/No